

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission  
RAIL SAFETY SECTION

Petition for authorization to reconstruct )  
the South Canal Street Viaduct over the )  
tracks of the Burlington Northern Santa )  
Fe Railway in the City of Chicago, County ) No. T02-0111  
of Cook and State of Illinois, and for a )  
waiver of the clearance requirements of 92 )  
Ill. Admin. Code, Section 1500 )

PETITION FOR SECOND SUPPLEMENTAL ORDER REQUESTING AN  
EXTENSION OF TIME TO COMPLETE PROJECT

The City of Chicago ("City"), by its attorney Mara S. Georges, Corporation Counsel, hereby petitions the Illinois Commerce Commission ("ICC" or "Commission") to issue a supplemental order granting a second extension of time to complete the reconstruction of the South Canal Street Viaduct over the railroad tracks of the Burlington Northern Santa Fe ("BNSF") Railway in Chicago, Illinois. In support of this petition, the City states as follows:

1. On April 9, 2003, the Commission issued an order granting the City's petition to reconstruct the South Canal Street Viaduct over the railroad tracks of the Burlington Northern Santa Fe ("BNSF") Railway in Chicago, Illinois. This order required that the City complete the project within 12 months or April 9, 2004.
2. On February 9, 2004, the City filed a Petition for Supplemental Order Requesting an Extension of Time to Complete Project to December 31, 2005. The City's Petition was granted by the Commission and a First Supplemental Order was issued on March 3,

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2004, a copy of which is attached hereto as Exhibit A. One of the bases for the City's Petition and consequently, the First Supplemental Order, was that the South Canal Street Viaduct project was delayed because an earlier project, a major redevelopment project in the city, including the construction of a Target Department store required the closing of adjacent Clark Street, and it would not be in the public's interest to have Canal Street and Clark Street, both main arterial thoroughfares, to be closed at the same time.

3. The Clark Street project was completed in July, 2005. Because the Clark Street project took longer than anticipated, the City will be unable to complete the South Canal Street reconstruction project by the December 31, 2005 due date. The City proposes that it be allowed to complete reconstruction of the South Canal Street Viaduct by December 31, 2006.
4. Because the City did not request any funding from either the railway, BNSF, or the Grade Crossing Protection Fund of the Motor Fuel Tax Law, granting the requested extension of time should not prejudice any other projects that depend on such funding. In addition, because the project did not require that any tracks be placed out of service, BSNF's operational schedule should not be impacted in any substantial way.
5. The City has expended substantial amounts of funds in the design and other pre-construction phases of the South Canal Street project and would be prejudiced if the extension was not granted. The South Canal Street Viaduct must be reconstructed because it has seriously deteriorated since its construction in 1929-1930.

6. This Petition is being filed no later than twenty-one days in advance of the scheduled construction deadline and the City has notified the Commission's Rail Safety Program Director of its request for an extension of time prior to filing this petition, in accordance with the Commission's April 9, 2003 Order.

WHEREFORE, the City of Chicago prays that the Illinois Commerce Commission enter a Supplemental Order, without hearings, in which it grants the City's Petition for an extension of time authorizing construction to be completed by December 31, 2006

Respectfully submitted,

CITY OF CHICAGO  
Mara S. Georges, Corporation Counsel

By:   
Senior Counsel

Diane Pezanoski  
Deputy Corporation Counsel  
Jack A. Pace  
Senior Counsel  
City of Chicago  
Department of Law  
Regulatory and Aviation Division  
30 N. La Salle Street  
Suite 900  
Chicago, Illinois 60602  
312-744-6997

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Petition for authorization to reconstruct	)	
the South Canal Street Viaduct over the	)	
tracks of the Burlington Northern Santa	)	
Fe Railway in the City of Chicago, County	)	Docket T02-0111
of Cook and State of Illinois, and for a	)	
waiver of the clearance requirements of 92	)	
Ill. Admin. Code, Section 1500	)	

**NOTICE OF FILING**

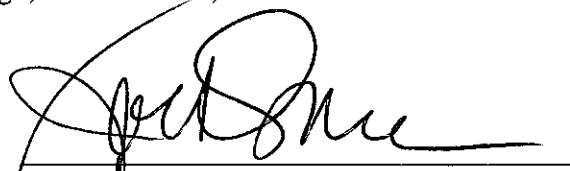
TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE THAT ON THIS DATE I caused to be mailed to the Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, by Federal Express, the original and three (3) copies of the City of Chicago's Petition for Second Supplemental Order Requesting an Extension of Time to Complete Project in the above-captioned docket.

Dated: September 8, 2005

**CERTIFICATE OF SERVICE**

I, JACK A. PACE, an attorney, hereby certify that a copy of the foregoing Petition for Second Supplemental Order Requesting an Extension of Time to Complete Project was served upon the party or parties listed on the attached service list, by hand delivery, facsimile or by first class mail, postage prepaid, from Suite 900, 30 North La Salle Street, Chicago, Illinois 60602, in accordance with the Rules of Practice of the Illinois Commerce Commission.

  
\_\_\_\_\_  
JACK A. PACE  
Senior Counsel  
30 North La Salle Street, Suite 900  
Chicago, IL 60602 (312) 744-6997

Service List  
ICC Docket T02-01111

IDOT

Diane O'Keefe, P.E.

Deputy Director, Region 1 Engineer

201 West Center Court

Schaumburg, Illinois 60196-1096

Patricia Casler

Director, Suburban Services

Burlington Northern Santa fe Railway

547 W. Jackson Blvd. #1509

Chicago, Illinois 60661

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Chicago, Illinois,  
Petitioner,

vs.

The Burlington Northern and Santa Fe Railway Company and the  
State of Illinois, Department of Transportation,  
Respondents

T02-0111  
1<sup>st</sup> Supp.

Petition for authorization to reconstruct the South Canal Street  
Viaduct over the tracks of The Burlington Northern and Santa Fe  
Railway in the City of Chicago, County of Cook and State of  
Illinois, and for a waiver of the clearance requirements of 92 Ill.  
Admin. Code, Section 1500.

FIRST SUPPLEMENTAL ORDER

By the Commission:

On November 12, 2002, the City of Chicago, Cook County, Illinois, a municipal corporation ("Petitioner" or "City") filed the above-captioned verified petition naming as Respondents The Burlington Northern and Santa Fe Railway Company ("BNSF") and the Department of Transportation of the State of Illinois ("IDOT").

Following full and public hearings, the Commission, in conference on April 9, 2003, entered an order approving the reconstruction of the South Canal Street viaduct and granted a waiver of the clearance requirements of 92 Illinois Administrative Code, Section 1500.

On February 9, 2004, Petitioner filed a Petition for Supplemental Order Requesting an Extension of Time to Complete Project. In its petition, it is stated that extended negotiations between the parties caused a substantial delay in the execution of the City/Railroad construction agreement. After execution of the agreement, there was a delay in receipt of approval of the agreement from IDOT.

Clark Street, which is near Canal Street, will be closed for reconstruction of access ramps in connection with the construction of a Target Department Store at Clark Street and Roosevelt Road. This project received approval prior to the project, which is the subject of this docket. The Chicago Department of Transportation will not allow the closing of Clark and Canal Streets at the same time. Therefore, the subject project will be completed after Clark Street has been reopened and should be completed by December 31, 2005.

EXHIBIT A

Through no fault of its own, Petitioner has suffered delays in completing the project heretofore approved and respectfully requests that the Commission grant its petition for an extension of time authorizing completion of the project by December 31, 2005.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) the Commission has jurisdiction of the parties hereto and the subject matter herein;
- (2) the recitals of fact set forth in the prefatory portion of this Supplementary Order are true and correct and are hereby adopted as findings of fact;
- 3) an extension of time to and including December 31, 2005 should be granted to the City of Chicago for completion of the reconstruction of the South Canal Street viaduct over the tracks of The Burlington Northern and Santa Fe Railway Company in the City of Chicago, Cook County, Illinois;
- 4) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects the Railroad Company to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises the Railroad Company that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that an extension of time to and including December 31, 2005, be, and it is hereby, granted to the City of Chicago to reconstruct the South Canal Street viaduct over the tracks of The Burlington Northern and Santa Fe Railway Company in the City of Chicago, Cook County, Illinois.

IT IS FURTHER ORDERED that in all other respects, the Order entered April 9, 2003 remains in full force and effect.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered time.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Order and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 3rd day of March 2004.

*Edward C. Husley* <sup>2</sup>

JUDGE	JBT
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>

Chairman